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# Market studies Information Bulletin

Canada

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Cat. No. lu54-69/2018E-PDF
ISSB/N 978-0-660-27893-3

2018-09-19

*Aussi offert en français sous le titre* Bulletin d'information sur les études de marché

## Preface

The Competition Bureau (**Bureau**) is an independent law enforcement agency that ensures Canadian businesses and consumers prosper in a competitive and innovative marketplace. Headed by the Commissioner of Competition (**Commissioner**), the Bureau investigates anti competitive practices and promotes compliance with the Competition Act (**Act**), the Consumer Packaging and Labelling Act (except as it relates to food), the Textile Labelling Act and the Precious Metals Marking Act.

In addition to investigating conduct and enforcing the Act, the Bureau promotes competition and compliance with the Act through public outreach and by advocating for greater reliance on competitive market forces. More competition generally leads to lower prices for consumers, as well as increased choice and greater innovation.

Market studies allow the Bureau to examine an industry or business sector (**sector**) from a competition perspective in order to identify relevant laws, policies, regulations or other factors that may impede competition. Market studies enable the Bureau to take a more holistic approach to analyzing a sector than other forms of advocacy, where the Bureau may be limited to providing advice on discrete issues, such as that relevant to a specific federal or provincial regulatory proceeding.

In conducting market studies, the Bureau relies on publicly available information, information already in its possession and information provided by stakeholders on a voluntary basis. Unlike many competition authorities around the world, including those in some of Canada's major trading partners–the European Union, the United States, the United Kingdom and Mexico–the Bureau does not have formal investigative powers to compel information for the purpose of market studies.

The Bureau has issued this Market Studies Information Bulletin (**Bulletin**) to describe how market studies are used to promote competition, and to provide transparency to stakeholders regarding how the Bureau selects and conducts market studies. The Bulletin also describes how confidential information provided by stakeholders on a voluntary basis is treated and used by the Bureau in its market study work. While recognizing that the Bureau cannot foresee all circumstances that could arise in the course of a market study, this Bulletin is intended to provide certainty and predictability to stakeholders regarding the Bureau's process in conducting market studies.

The Bureau may revisit certain aspects of this Bulletin in light of experience and changing circumstances.

Matthew Boswell
Interim Commissioner of Competition

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## Introduction

The Commissioner is responsible for the administration and enforcement of the Act.[Footnote 1] The purpose of the Act is to maintain and encourage competition in Canada in order to, amongst other objectives, promote the efficiency and adaptability of the Canadian economy and to provide consumers with competitive products and product choices.[Footnote 2]

As part of its mandate, the Bureau uses a wide range of tools to promote and advocate for the benefits of a competitive marketplace.[Footnote 3] Market studies are one of these tools. The Bureau has the power to carry out market studies pursuant to various provisions of the Act, including sections 7,[Footnote 4] 125 and 126.[Footnote 5]

The main goal of conducting a market study is to assess a sector from a competition perspective, for example, to determine whether there are features of the sector that restrict, or may restrict, competition. Competition issues may result from a number of factors, including the behaviour of firms and individuals, laws, regulations, policies or structural barriers present in a sector.

Where business conduct impacts competition and is contrary to the Act (e.g. agreements between competitors to fix prices or rig bids, or merger transactions that prevent or lessen competition substantially, amongst other things), the Bureau will typically address the conduct through enforcement measures. Where other factors present in a sector appear to restrict competition, such as regulatory or structural barriers, the Bureau may choose to use advocacy instruments, including market studies, to promote competition.

Market studies can have a range of outcomes, including motivating direct action by governments, regulators or policymakers to remove unnecessary barriers to competition.[Footnote 6] Market studies can also be exploratory in nature, for example, by examining new or emerging trends in sectors where potential competition concerns have yet to be studied or addressed by regulators and other stakeholders. They can serve as a useful tool for the Bureau to influence diverse stakeholder groups.

The Bureau has no authority to seek penalties or other types of remedies before the Competition Tribunal (**Tribunal**) or the courts in the context of its market study work. Penalties or other remedies can only be achieved through enforcement efforts, which would deal with anti-competitive conduct. Likewise, the Bureau does not have the ability to compel information for the purpose of market studies.[Footnote 7] Instead, the Bureau relies on publicly available information, information already in its possession and information provided by stakeholders on a voluntary basis.

Although market studies may vary in scope, complexity and duration, the Bureau generally follows a number of standard steps when selecting, scoping and carrying out a market study. In order to establish a clear and predictable framework around the conduct of market studies for the benefit of stakeholders, this Bulletin sets out and explains these steps. The Bulletin also describes the Bureau's treatment of confidential information in relation to market studies as well as the interaction between market studies and Bureau enforcement efforts.

## Market Study Selection and Scoping

### Identifying Potential Market Studies

Most competition issues that come to the Bureau's attention are first evaluated as potential enforcement matters to determine whether they may contravene the Act. Where there is evidence of a possible contravention of the Act, the Bureau will generally use the enforcement and compliance tools outlined in the Competition and Compliance Framework Bulletin.[Footnote 8]

Where there is no obvious violation of the Act and yet impediments to competition appear to exist in a sector, the Bureau may use a market study to examine those impediments. Where impediments to competition seem to arise from legislation, regulations, policies, structural barriers in a sector, or other factors that affect important aspects of competition (e.g. prices, production, entry, advertising, switching, product choice and quality), a market study may be an appropriate tool to assess competition concerns.

As market studies are generally resource-intensive projects, the Bureau takes considerable care in selecting and scoping a market study to ensure that it will examine issues that are of critical importance to Canadians and the Canadian economy.

The Bureau generally researches and evaluates several potential sectors before undertaking a market study. The Bureau will seek to identify sectors that are important to the Canadian economy, where the findings of a market study could be used to help promote the efficiency and adaptability of the Canadian economy and provide consumers with competitive products and product choices.

In identifying potential sectors, the Bureau will consider a range of information, including:

- suggestions received through the Bureau's Advocacy Suggestion Form;[Footnote 9]
- input received from stakeholders, including the legal and business communities, consumer groups, academics and others;
- complaints received by the Bureau;
- previous Bureau activities in a given sector or matters examined by the Bureau's enforcement branches that appear to indicate competition issues in a sector, but which may not be suitable for enforcement action;
- competition concerns that are raised in public policy discussions, media reports or work being done by other competition agencies;
- evaluation of the economic impact of legislation, regulation or policies;
- legislative or regulatory proposals or proceedings and other federal or provincial policy initiatives; and
- requests from federal or provincial governments, policymakers or regulators.

When possible subjects for a market study have been identified, the Bureau may consult with stakeholders to obtain additional views on the appropriateness of the market studies under consideration. At this stage, the Bureau will also conduct research to better understand the sector(s) being considered and any potential competition concerns. This research will assess factors including, but not limited to, sector structure, size and importance; key sector participants; relevant legislation, regulations and policies; and previous Bureau activity in the area, if any.

## Market Study Selection

Prior to selecting a market study, the Bureau will consider a variety of factors concurrently. Some factors may be weighed more heavily than others, but each will help shape the Bureau's ultimate decision to pursue, or refrain from pursuing, a market study in a particular sector.

As outlined in the Competition and Compliance Framework Bulletin the Bureau takes into account the following when assessing a potential advocacy project, including possible market studies:

- Does an opportunity to present the Bureau's findings exist, and is there a high level of public interest?
- Will the Bureau bring forward unique arguments, unlikely to be presented by others?
- Will the Bureau likely be able to gauge the impact of its advocacy efforts?
- Are the Bureau's efforts likely to have clear, tangible benefits for Canadians? How widely and deeply will the impact likely be felt?[Footnote 10]

As a practical matter, in selecting a market study, the Bureau may also take into consideration other factors, such as the availability and cost of relevant data or information. As the Bureau cannot compel any person to provide data or information in the context of a market study, it must rely on what is already in its possession, publicly available and provided voluntarily by stakeholders.[Footnote 11] The availability of experts and internal Bureau expertise, as well as the required and available resources and the length of time that may be required to complete a market study, are other factors that may be considered prior to selecting a final subject.

There are a number of circumstances where the Bureau is unlikely to conduct a market study, including situations where the Bureau expects to commence enforcement action, where a market study may overlap with existing Bureau enforcement efforts, Tribunal or court proceedings, or where a competition issue is being addressed in other fora.

## Market Study Scope

Market studies usually address complex issues, particularly if the sector in question is subject to comprehensive regulation or is in a period of transition resulting from emerging technologies or new business models.

The Bureau will typically attempt to narrow the scope of its market studies, where appropriate, to target the most important issues that may be impacting competition. This can take the form of presenting key questions that the market study will address (and potentially identifying issues that the market study will not examine). Another technique can involve setting quantitatively testable hypotheses; for example, comparing prices in jurisdictions with regulations that restrict entry against prices in jurisdictions with less restrictive regulations.[Footnote 12]

Narrowing the range of issues to be addressed in a market study can benefit stakeholders, who are better able to determine whether and how to engage in the market study. This also helps the Bureau to conduct and publish market studies in a timely manner, addressing issues that are of most importance to Canadians and the Canadian economy, and addressing such issues in a focused manner.

## General Methodology for Market Studies

### Market Study Notice

The Bureau maintains a high degree of transparency in its market study work, typically publishing a market study notice and a media release at the commencement of each study.[Footnote 13]

The market study notice states the overall purpose of the market study and generally provides a brief description of why it was selected. Market study notices also include information on:

- the scope of the market study and key questions to be addressed;
- the role (if any) of other government departments and agencies that may be involved;
- the Bureau's prior work in the sector, if public;
- the timeline for the market study, including key dates such as public consultations and report publication; and
- guidance on how stakeholders can become involved.

### Information Gathering

The launch of a market study is typically accompanied by a period of intense information gathering. This will build on the research conducted by the Bureau when initially selecting and scoping the market study. The Bureau will generally begin by collecting as much information as possible from publicly available sources. In many cases, this will include qualitative and quantitative information from research papers and reports put out by regulators, industry associations, academics, think tanks and others. The Bureau may review public filings and financial documents such as annual reports, statistical information, and survey data.

While gathering information, the Bureau will compile a list of relevant stakeholders that may have materials or perspectives on the issues being examined in the market study. Stakeholders that the Bureau may contact will vary, but usually include government departments and regulators, market participants (including incumbents and new entrants operating within the sector), industry associations, consumer groups and foreign antitrust or regulatory agencies, where appropriate. Depending on the stakeholder, the Bureau may request specific information or conduct an interview, either in-person or by phone. Calls for written submissions may also be made. The information and views provided by stakeholders are integral to market studies.

The Bureau tries to minimize the cost for stakeholders to respond to information requests or otherwise participate in a market study. During meetings with stakeholders, the Bureau will discuss the nature and accessibility of any relevant information sought (e.g. volume of information, time periods covered by a potential information request, etc.). The Bureau may also explore alternate ways of sourcing relevant information.

As part of the information gathering process, the Bureau may hold roundtables or workshops to bring together stakeholders, experts, and other interested parties to present and discuss relevant issues.[Footnote 14] When used, these tools provide an invaluable opportunity for the Bureau to gather insights on emerging issues and ways to foster competition and innovation in the sector.

From time to time, the Bureau may also retain industry, economic or other experts to assist with certain aspects of a market study, including information gathering. The decision to retain an expert is based on a number of factors, such as budgetary considerations and the need for subject matter expertise, and will be made on a case-by-case basis.

The Bureau does not use market studies to seek information for its enforcement activities. In conducting market studies, the Bureau will typically seek data and background information on the sector under study from market participants and other stakeholders. The Bureau will not generally seek day-to-day business records or communications, such as e-mails. In instances where a market study uncovers clear evidence that the Act may have been contravened, that evidence may be used in an enforcement action. Conversely, enforcement investigations may, in some instances, yield information that motivates the Bureau to undertake a market study.

## i) Treatment of Confidential Information

The Bureau's policy on the treatment of confidential information obtained in the course of the administration and enforcement of the Act is set out in the Information Bulletin on the Communication of Confidential Information Under the Competition Act (**Confidentiality Bulletin**).[Footnote 15] The policies described in the Confidentiality Bulletin also apply to confidential information obtained in relation to market studies.

Confidential information that is voluntarily provided to the Bureau during the course of a market study is protected under the confidentiality provisions in section 29 of the Act. Section 29 of the Act protects information obtained by or provided to the Bureau, including the identities of the persons who provided the information, and any information that could reveal their identities. Section 29 provides the Bureau with the discretion to communicate information in four limited circumstances:

- to a Canadian law enforcement agency;
- for the purposes of administration or enforcement of the Act;
- when the information has been made public; or
- when communication has been authorized by the person who provided the information.

When information is received, care is taken to maintain confidentiality in communications with stakeholders or the public, and in final reports or other documents that may be produced as part of a market study.[Footnote 16]

Although all information provided voluntarily will be treated in accordance with section 29 of the Act, a market study report may include analysis that is based on confidential or commercially sensitive information. Stakeholders are encouraged to identify any such information so that the Bureau can ensure it is not published in the report. Where an analysis is based on confidential or commercially sensitive information, the Bureau takes care to protect the interests and identities of individual stakeholders, for example, by aggregating information so that precise details cannot be attributed to specific parties. The Bureau may also ask stakeholders for permission to publish their identity, and any written submissions or other information provided pursuant to the market study. However, stakeholders are under no obligation to grant the requested authorization.

## Competition Analysis

The Bureau's analysis during the course of a market study generally examines the dynamics of competition in a sector, including whether there are impediments to competition that can be removed or reduced to increase competition and innovation. Where possible, quantitative information (e.g. price and quantity information) can be examined using econometric analysis and other methods to identify trends, determine which areas appear to suffer from the most competition issues, and test the empirical impact of certain regulatory measures or market structures. Findings from the analysis of quantitative data can then be matched and elaborated upon using qualitative information obtained from interviews, reports and other sources.

Once the Bureau has identified competition impediments and their likely causes, consideration will be given to potential remedies that could be implemented to address any competition concerns. Generally speaking, remedies tend to take the form of recommendations to regulators, policymakers, industry associations or other stakeholders regarding how competition impediments may be addressed. For example, the Bureau may recommend that certain regulatory barriers be removed or relaxed. In other cases, the Bureau may find that modernizing, expanding or introducing regulations may be the best way to level the competitive playing field or address a market failure that is having a negative impact on competition. For example, in the context of the FinTech report, the Bureau made recommendations to open access to core infrastructure and services to facilitate entry of new, innovative business models.

When evaluating actual or potential regulatory barriers to competition in a sector, the Bureau will typically gauge the scale and scope of possible harm to competition by carrying out a preliminary assessment of actual or proposed regulation. If the preliminary assessment suggests the regulation has the potential to negatively impact competition, the Bureau may then consider whether such restrictions are proportionate to promoting or preserving other public policy objectives. If they are not, the Bureau may recommend adopting less restrictive regulatory alternatives, while recognizing that some regulation may be necessary to achieve certain public policy objectives. This approach is based on a process recommended by the Organization for Economic Cooperation and Development.[Footnote 17]

To develop policy options and alternatives in regulated sectors, the Bureau may also examine how regulations affect the broader environment by consulting stakeholders, obtaining the views of experts, and considering the experience in other jurisdictions that have similar regulatory frameworks. The Bureau may also conduct a cost-benefit analysis of the options under consideration. Whenever possible, the Bureau will describe the impact of relevant market trends, such as technological change, new supply chains, changing consumer preferences and developments in related markets. Gaining an understanding of changes in a sector is important to evaluating whether a given regulatory regime is likely to have restrictive effects on competition.

## Changing the Scope or Discontinuing a Market Study

After an initial period of research and consultation, the Bureau may decide to modify the scope of a market study by excluding certain issues from examination while adding or concentrating its efforts on others. There may also be circumstances when the Bureau decides not to continue with a market study when, on examination, the magnitude of any potential competition issues are not as significant as initially thought, when an action by a regulator, policymaker or other stakeholder reduces the need for the study,[Footnote 18] when the Bureau has been unable to gather sufficient information to fully assess the competitive dynamics of the sector, or when the

Bureau decides to take an alternative approach, including potential enforcement action. In these situations, the Bureau may update the market study notice to reflect any changes.[Footnote 19]

### Pre-Publication Consultations

Prior to issuing a final report, the Bureau will conduct pre-publication consultations to validate and refine market study findings, analysis, and possible policy options and alternatives. The Bureau will make best efforts to consult key stakeholders to solicit their views on the report's accuracy and study findings, as well as the reasonableness and effectiveness of any proposed recommendations. It is at this stage that the Bureau will also engage in discussions with stakeholders to ensure that no confidential or commercially sensitive information is disclosed. Where possible, the Bureau will conduct pre-publication consultations by publishing an interim draft of the market study report for public comment, and will make best efforts to ensure that stakeholders have sufficient time to review and comment on draft reports.[Footnote 20]

## Market Study Report and Recommendations

Following pre-publication consultations, the Bureau will typically publish a final market study report on its website. Market study reports target diverse stakeholder groups, including, regulators and policymakers, government agencies, legal and business communities, consumer groups and the general public.

The Bureau will make best efforts to publish a market study report within 12 to 18 months of issuing a market study notice. However, the complexity of the market study as well as the extent of external outreach prior to finalizing the report may impact timelines. Publication of a market study report is generally accompanied by a news release and outreach strategy in order to raise awareness of the Bureau's work and findings.

In addition to addressing the key questions set out in the market study notice, the market study report will generally contain an overview of the sector examined, a description of any relevant laws, policies or regulations that govern the sector, research methodologies used throughout the course of the market study, an assessment of any competition issues uncovered, and a list of recommendations.

Market study reports will typically identify whether aspects of the sector's structure, existing or proposed laws, regulations, policies or other factors impede competition, and set out recommendations to address any competition concerns identified. The Bureau acknowledges that certain stakeholders, including regulators and policymakers, have subject-matter expertise and very specific mandates. In making recommendations to these parties, the Bureau, as an expert in competition, will identify reasonable and effective alternatives that permit greater scope for competitive market forces, while continuing to allow regulators and policymakers to fulfil their own objectives, recognizing that competition objectives may need to be weighed against other public policy considerations.

## Market Study Follow-up and Evaluation

Following the publication of a market study report, the Bureau may monitor actions by regulators, policymakers and other stakeholders to see what changes are made in line with the Bureau's recommendations, and what impact such changes appear to have on the sector. In matters where regulatory frameworks are actively being reviewed, changes may be observed within a relatively short period of time. In other cases, the

Bureau may need to observe a sector for several years to determine the impact of its efforts, especially where the Bureau's recommendations are directed at several different decision makers (e.g. where a sector is subject to regulation in a variety of provinces). In some cases, the Bureau may publish a follow up assessment to report on changes made and identify areas that may still appear to present competition problems.[Footnote 21]

The evaluation of market studies assists the Bureau in gauging the impact of its work. This may factor into the selection of future advocacy initiatives or other Bureau efforts.

When a market study report makes recommendations aimed at regulatory or policy change, the Bureau will remain available to collaborate with regulators and policymakers to answer any further questions they may have, and provide guidance on the implementation of its recommendations. A market study report may also be used to support the Bureau's position in subsequent representations to stakeholders, including representations that may be made to federal or provincial boards, commission or tribunals pursuant to sections 125 and 126 of the Act.

## Conclusion

Market studies can have a range of competition-enhancing outcomes, and serve as a useful tool for diverse stakeholder groups. Going forward, the Bureau will continue to use market studies to promote the efficiency and adaptability of the Canadian economy and to provide consumers with competitive products and product choices.

As outlined in this Bulletin, the Bureau has a general methodology that is used to guide the conduct of its market studies while remaining flexible and capable of being adapted to fit the needs of a given situation, including the nature and scope of issues to be studied, the availability of information, and the willingness of stakeholders to cooperate.

Building on its past experiences, stakeholder input and international best practices, the Bureau will continue to refine and clarify its approach to market studies as needed.

## Annex A: Bureau Market Studies[Footnote 22]

### FinTech (2017)

In May 2016, the Bureau launched a market study into the FinTech sector. The study focused on three broad service categories–retail payments and the retail payments system; lending and equity crowdfunding; and investment dealing and advice. The goal of the study was to find out why Canada lags behind its international peers when it comes to adopting technology led innovation.

The findings of this study were published in December 2017 and are based on an extensive examination of the products or services in these categories, including a review of publicly available information as well as submissions from FinTech start ups, incumbent financial institutions, industry experts, regulators and industry/consumer associations. The Bureau conducted over 130 stakeholder interviews and 10 information sessions, participated in 13 outreach events and hosted a FinTech workshop that brought together market players, regulatory authorities and policymakers, culminating in the release of a draft report for public

comment. The Bureau used the information collected to assess the impact of FinTech innovation on the competitive landscape, identify the barriers to entry and expansion of FinTech in Canada and determine whether regulatory changes may be needed to promote greater competition and innovation in the financial services sector.

Financial sector regulators and policymakers have made significant progress in adapting Canada's regulatory environment to support innovation in the financial services sector. While regulation is needed to achieve important policy objectives, such as consumer protection and a stable financial system, regulations should be modernized to promote greater competition and innovation for Canadians.

Based on the findings of this market study, the Bureau developed 11 broad, and 19 more targeted recommendations, for financial sector regulatory authorities and policymakers to ensure future regulatory change creates space for innovation in this important sector of the Canadian economy.

## Beer (2013)

In late 2013, the Bureau initiated a study into the beer industries in Ontario and Quebec. While provinces in Canada have varying beverage alcohol systems, most other Canadian provinces fit on a spectrum either near to or in between Ontario and Quebec in terms of the degree of regulatory control over retail operations. In addition, at the time of the study, there were a number of conflicting reports as to why the price of beer varied between Ontario and Quebec. The purpose of the study was to examine differences between the industries in Ontario and Quebec and explore the effect that these differences had on competition in each province.

The study attracted significant attention from both the media and the public, and the Bureau actively contributed to the debate. During the study, the Ontario government announced plans to establish a new framework for the retail sale of beer in Ontario, including expansion of beer sales into grocery stores. The Bureau viewed the proposed policy changes, aimed at providing increased convenience and choice for consumers, as a positive step toward a more competitive beer market in Ontario. As a result of these developments, the Bureau discontinued its market study.

## Self-Regulated Professions (2007)

In 2007, the Bureau published a study on balancing competition and regulation in self regulated professions. The study examined five groups of professionals, including accountants, lawyers, optometrists, pharmacists and real estate agents. As self regulated professions have the power to put in place restrictions that have the force of law, while potentially having conflicting concerns between their own interests and those of the public, the Bureau chose to review their regulatory frameworks to examine any potentially unnecessary and anti competitive restrictions that might be in place. In conducting the study, the Bureau relied on an internal review of regulations and documents, extensive questionnaires and interviews with regulatory bodies and members of the profession, available statistical information about these professions, and academic and economic literature exploring the impact of certain regulatory restrictions and structures on competition in professional markets.

While regulations varied considerably between provinces and the professions examined, the Bureau identified several areas that seemed of general concern, including restrictions on entering the profession, overly narrow scopes of practice, restrictions on advertising, use of suggested fee guides, and restrictions on business

structures. The study was well received by regulators, both in the professions examined and other organizations, many of which took into account the Bureau's recommendations when subsequently amending their regulatory frameworks.

## Self-Regulated Professions – Post-study assessment (2011)

In 2011, the Bureau released a post study assessment of progress made in implementing the study's recommendations. As part of this evaluation, the Bureau reached out to each of the five professions examined on measures they had taken to implement the study's recommendations, made additional contacts with professionals and other stakeholders, and performed its own monitoring and research to assess changes in the marketplace. The assessment found that the study had been successful in raising awareness, among all the professions, of the need to consider competition when designing regulations. In addition, progress had been made toward the removal of unnecessary restrictions on competition in a number of areas identified in the study, particularly restrictions on inter provincial mobility. However, more work remained to be done by the professions to strike the right balance between competition and regulation.

## Generic Drugs (2007)

In 2007, the Bureau published a market study on the generic drug sector examining the state of the market and identifying areas where changes in the market framework could secure greater benefits through competition. Several recent studies had found that prescription generics were relatively more expensive in Canada than in other countries. In conducting the study, the Bureau relied on publicly available information, data purchased from third party providers, and information voluntarily provided by sector participants. A preliminary draft of the study was also circulated to key interest groups for fact checking and to provide an opportunity to offer the Bureau additional information.

The Bureau found that generic drugs were supplied in Canada through a unique and complex framework that allowed pharmacies to substitute generic drug products listed on formularies for brand name drugs. Generic manufacturing had become more competitive over the last 15 years, with strong competition in the supply of many generic drugs in Canada. However, competition by generic manufacturers to offer lower prices through rebates were often to the benefit of pharmacies, rather than decreasing the prices paid by insurance plans or out of pocket by consumers. The Bureau found that a regulatory framework where incentives to supply drug plans more closely reflected the underlying market dynamics could provide significant benefits to drug plans, and in turn to insurers, employers and Canadians.

## Benefiting from Generic Drug Competition in Canada: The Way Forward (2008)

In 2008, the Bureau published a follow up report setting out possible options for policymakers and drug plans to obtain the benefits from competition in the generic drugs sectors. The Bureau recommended that private plans could improve their bargaining position by developing preferred pharmacy networks, as well as providing patients with incentives to seek lower prices and use preferred providers. Public plans could take measures to obtain true generic drug prices (such as through competitive tendering), compensate pharmacy services directly rather than through generic drug rebates, remove restrictions on competition between pharmacies, and improve inter provincial cooperation. The Bureau's work was well received by provincial policymakers and other stakeholders, and formed part of the discussion of subsequent work in this area.

## Footnotes

### Footnote 1

Competition Act, R.S.C., 1985, c. C-34, as amended, at section 7.

### Footnote 2

Competition Act, supra note 1 at section 1.1.

### Footnote 3

The Bureau has a broad and flexible range of instruments available for advocacy work. These instruments are generally conceptualized into three main categories: (1) advice to regulators and policymakers; (2) regulatory interventions; and (3) market studies (which may inform (1) and (2)). For additional information, see the Bureau's Competition and Compliance Framework Bulletin.

### Footnote 4

Subsection 7(1) is a broad-based direction to the Commissioner that includes the conduct of projects, including market studies, aimed at making the administration and enforcement of the Act more effective. See also section 1.1 of the Act, which states that the purpose of the Act, among other things, is to "maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy" and to "provide consumers with competitive prices and product choices."

### Footnote 5

Sections 125 and 126 of the Act grant the Commissioner a broad advocacy function to make representations in respect of competition to federal and provincial boards, commissions, tribunals or other persons carrying on regulatory activities; it is not limited to administrative tribunals or agencies.

### Footnote 6

In circumstances where regulations may be required, the Bureau advocates that they strike the right balance between competition and other competing public policy objectives.

### Footnote 7

The value of formal investigative powers in enhancing the ability of competition agencies to thoroughly assess the state of competition in a given sector has been recognized by the Organisation for Economic Co-operation and Development.

Footnote 8

Competition and Compliance Framework Bulletin.

Footnote 9

See the Bureau's Online Forms.

Footnote 10

For additional detail, see pages 28-29 of the Competition and Compliance Framework Bulletin. The Bureau may also consult with stakeholders to inform its assessment of these considerations.

Footnote 11

Where there is a lack of data or information, or the Bureau has reason to anticipate a lack of cooperation from stakeholders, the Bureau may take this into account when deciding whether to move forward with a particular market study or in scoping the issues to be included therein.

Footnote 12

The Bureau's ability to carry out any quantitative analysis may be limited in situations where it must depend on data provided by stakeholders on a voluntary basis. Cross-jurisdictional price comparisons will be based on appropriately comparable information.

Footnote 13

Under certain circumstances, it may not be possible for the Bureau to publish a market study notice. This situation may arise when the Bureau conducts a study jointly with, or at the request of, another government department or agency.

Footnote 14

As part of its market study into technology-led innovation in the Canadian financial services (**FinTech**) sector, the Bureau held a one-day workshop to examine the intersection of competition, innovation and regulation in the sector. The workshop focussed on the competitive forces at play and the possible impediments to growth of FinTech in Canada. Approximately 130 participants from Canada and abroad attended the workshop, with over 100 additional participants taking part via webcast. The FinTech workshop was followed by the publication of a workshop report. The final market study report: Technology-led innovation in the Canadian financial services sector.

Footnote 15

Information Bulletin on the Communication of Confidential Information Under the Competition Act.

Footnote 16

The Bureau may exercise its authority to make representations to federal and provincial boards, commissions and tribunals, drawing on information obtained and analysis conducted throughout the course of a market study (including prior to the publication of any report), where the situation falls within this exception provided for under subsection 29(1) of the Act.

Footnote 17

Competition Assessment Toolkit, Version 3.0: Vol. 1 Principles, Vol. 2 Guidance and Vol. 3 Operational Manual, ©2016 OECD available at www.oecd.org. See also Competition Advocate.

Footnote 18

For example, in April 2015, the Ontario Premier's Advisory Council recommended a number of changes to the Ontario beer industry, including expansion of beer sales into grocery stores. In light of these developments, the Bureau discontinued its market study into the beer industries in Québec and Ontario. See, Annual Report of the Commissioner of Competition for the Year Ending March 31, 2015.

Footnote 19

Examples of exceptions to this may be circumstances when the Bureau discovers evidence of an alleged criminal offence(s) in the sector under study, or the Commissioner decides to make an ex parte application for an order under sections 11, 15 and 16 of the Act or to seek an order under the Criminal Code.

Footnote 20

As is the case with the publication of a market study notice, there may also be circumstances when the Bureau is not in a position to publish a draft (or final) report, such as when the Bureau conducts a joint study with another government department or agency or when the study results from a request from another government department or agency. The Bureau may also choose to conduct pre-publication consultations informally through one-on-one meetings with designated stakeholders to "market test" proposals.

Footnote 21

For example, in relation to the Bureau's market studies on self-regulated professions and the generic drug sector, both published in 2007, the Bureau conducted formal post-study assessments to report on regulatory changes and make further recommendations. See, Benefitting from Generic Drug Competition in Canada: The Way Forward, 2008 and Self-Regulated Professions–Post-study assessment, 2011.

Footnote 22

This annex summarizes market studies conducted by the Bureau between 2007 and 2017.